COPY

In the
United States Circuit Court of Appeals
For the Seventh Circuit

No. 8500

THE UNITED STATES OF AMERICA,
Plaintiff-Appellee,

vs.

DANIEL K. CATLIN, FREDERICK PITZMAN AND LEWIS M. RUMSEY, JR., AS TRUSTEES UNDER DEED DATED FEBRUARY 1, 1921, ETC.,
Defendants-Appellants.

Appeal from the District Court of the United State for the Southern District of Illinois, Southern Division.

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Pleas in the District Court of the United States of America within and for the Southern Division of the thern District of Illinois, held in the City of Spring-, in said Division and District, before the Honorable rles G. Briggle and the Honorable J. Leroy Adair, ges of said Court, on Monday the fifth day of January, ne year of our Lord one thousand nine hundred and y-two, and of the Independence of the United States merica, the one hundred and sixty-sixth year.

ent:

Charles G. Briggle, District Judge.
J. Leroy Adair, District Judge.
Robert Grant, United States Marshal.
Howard L. Doyle, United States Attorney.
G. W. Schwaner, Clerk.

st:

G. W. Schwaner,
Clerk.

2 IN THE DISTRICT COURT OF THE UNITED STATES

For the Southern District of Illinois,

Southern Division.

United States of America, *Petitioner,* *vs.* 1,113 Acres of Land, more or less, Situate in Madison County, Illinois, and Commonwealth Steel Company, a Corporation, *et al.*, *Defendants.*	Civil Action No. 228.

(Filed Mar. 31, 1942.)

Be It Remembered, that heretofore to wit: on the 31st day of March, in the year of our Lord one thousand nine hundred and forty-two, that being one of the days of the January Term, A. D. 1942, of the District Court of the United States for the Southern District of Illinois, Southern Division thereof, there was filed in the office of the Clerk of said court a certain Petition for Condemnation, which said Petition for Condemnation was and is in the words and figures following, to wit:

3 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—228) * *

PETITION FOR CONDEMNATION.

To the Honorable Judges of the District Court of the United States of America for the Southern District of Illinois:

Now comes the United States of America, Petitioner herein, by its Attorney, Howard L. Doyle, United States Attorney for the Southern District of Illinois, at the direction of and on behalf of the Attorney General of the United States of America, pursuant to the request of the Secretary of War, and files this, its Petition for Condemnation herein, and represents unto the Court as follows:

I.

That pursuant to the provisions contained in the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), and April 11, 1918 (40 Stat. 518, 50 U. S. C., Section 171), the Secretary of War is authorized to cause proceedings to be instituted in the name of the United States for the acquirement by condemnation of any land needed for the site, location, construction and prosecution of works for fortifications, coast defenses, mili-
4 tary training camps, and for the construction and operation of plants for the production of nitrate and other compounds, and the manufacture of explosives and other munitions of war, and that when such property is acquired in time of war upon the filing of the petition for the condemnation of any land immediate possession thereof may be taken to the extent of the interest to be acquired, and the lands may be occupied and used for such military purposes.

II.

That funds have been appropriated for the acquisition of lands needed for the prosecution of military affairs of the United States in connection with the present emergency by the Act of Congress approved December 17, 1941 (Public Law 353—77th Congress).

III.

That by letter dated March 26, 1942, the Secretary of War, Honorable Henry L. Stimson, requested the Attorney General of the United States to institute proceedings to acquire the lands hereinafter referred to in fee simple, together with the buildings and improvements thereon and the appurtenances thereto, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, and for pipe lines, and that the United States be given the immediate right to the possession, use and occupancy of said land, buildings and improvements thereon and the appurtenances thereto, pursuant to the provisions of the Acts of Congress referred to in Paragraph I hereof.

IV.

That the land needed for the site, location, construction and prosecution of the works hereinabove referred to is more particularly described on Exhibit "A", and delineated on the plat marked Exhibit "B", both of which exhibits are attached hereto and by this reference made a part hereof, and that the names of the apparent owners of said land are as follows: Niedringhaus Trustees; the G. C.-St. L. & E. Belt Line Railroad; the Terminal Railroad Association; the Granite City Sewer R/W; the Commonwealth Steel Company, a Corporation; the Southern Railway; the East Side Levee and Sanitary District; and the Coal Land Syndicate, all of whom are hereby named as defendants in this petition.

V.

Wherefore, your petitioner prays that this Honorable Court enter an order condemning the lands herein described for the use of the United States of America in fee simple, together with the buildings and improvements thereon and the appurtenances thereto, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, and for pipe lines, and that immediate possession thereof may be taken to the extent of the interest to be acquired and the land may be occupied and used for the military purposes hereinabove described.

And your petitioner further prays that the respective rights and interest in the real estate of the parties entitled thereto may be inquired into and ascertained by this court; and that the compensation which your petitioner shall pay for the real estate, together with all improvements thereon and appurtenances thereunto belonging, may be determined and ascertained according to law, and that such other and further proceedings may be had and taken in the premises as may be appropriate fully and completely to vest the United States of America with title to said land and all the tracts, pieces or parcels thereof, in fee simple absolute, together with the buildings and improvements thereon and appurtenances thereto, subject, however, to existing easements for public roads and highways, for public utilities, for railroads, and for pipe lines, free from any liens or claims of any person or persons,

corporation or body politic whomsoever; and that the Court may order the distribution of the compensation to the parties thereto entitled according to their respective rights, interest and ownership; and that your petitioner may have such further and other relief in the premises as the nature of its case shall require and to Your Honors shall seem meet.

Howard L. Doyle,
United States Attorney.

Indorsed, Filed March 31, 1942. G. W. Schwaner, Clerk.

7 NEW EXHIBIT "A".

(Filed Feb. 8, 1943. G. W. Schwaner, Clerk.)

A tract of land lying partly in Granite City, City of Madison and City of Venice, in Madison County, Illinois, being part of what is commonly known as Kerr Island and parts, respectively, of U. S. Surveys 604 and 616, Fractional Sections Fourteen (14), Twenty-two (22), Twenty-three (23), Twenty-four (24), Twenty-six (26), and Twenty-seven (27), in Township Three (3) North, Range Ten (10) West of the Third Principal Meridian, and more particularly described as follows, to wit:

Beginning at an iron pipe marking the intersection of the north line of Neidringhaus Avenue and the west line of Cedar Street in Granite City; thence south no degrees, six and one-half minutes east (S. 0° 06½′ E.) eighty and no-tenths (80.0) feet along the west line of Cedar Street to an iron pipe marking the intersection of the south line of Neidringhaus Avenue and the west line of Cedar Street; thence south no degrees, seventeen and one-half minutes East (S. 0° 17½′ E.) eight hundred sixty and one-tenth (860.1) feet along the west line of Cedar Street to an iron pipe marking the intersection of the west line of Cedar Street and the south line of Chicago Avenue; thence north eighty-nine degrees, forty-three minutes East (N. 89° 43′ E.) one thousand eight hundred and no-tenths (1,800.0) feet along the south line of Chicago Avenue to an iron pipe; thence north sixty-one degrees, fifty-nine minutes east (N. 61° 59′ E.) three hundred sixty-three and no-tenths (363.0) feet to an iron pipe in the west right-of-way line of the Granite City and Madison Belt Line Railroad

Company (Terminal Railroad Association of St. Louis); thence south forty degrees, fifteen and one-half minutes west (S. 40° 15½′ W.) five hundred seventy-five and eight-tenths (575.8) feet along said right-of-way line to an iron pipe; thence south forty-nine degrees, forty-four and one-half minutes east (S. 49° 44½′ E.) fifty and no-tenths (50.0) feet to an iron pipe in the west right-of-way line of The Alton Railroad; thence south forty degrees, fifteen and one-half minutes west (S. 40° 15½′ W.) seven hundred sixty-eight and seven-tenths (768.7) feet along said west right-of-way line to an iron pipe marking the intersection of the west right-of-way line of The Alton Railroad and the center line of Fractional Section 24; thence south eighty-nine degrees, forty-three minutes west (S. 89° 43′ W.) sixty and seven-tenths (60.7) feet along the center line of Fractional Section 24 to an iron pipe; thence south forty degrees, fifteen and one-half minutes west (S. 40° 15½′ W.) eight hundred sixty-eight and two-tenths (868.2) feet to an iron pipe marking the point of curve to the left; thence along said curve to the left having a radius of nine thousand one hundred sixty-seven and eight-tenths (9,167.8) feet a distance of one thousand four hundred ten and eight-tenths (1,410.8) feet to an iron pipe marking the intersection of the west right-of-way line of The Alton Railroad and the north line of U. S. Survey 604; thence south seventy-one degrees, fifty-six minutes east (S. 71° 56′ E.) twenty-nine and eight-tenths (29.8) feet along said right-of-way line of The Alton Railroad and the north line of U. S. Survey 604 to an iron pipe marking the point of curve to the left; thence along said curve to the left having a radius of nine thousand one hundred thirty-eight and eight-tenths (9,138.8) feet a distance of eight hundred twenty-four and no-tenths (824.0) feet to a point; thence north seventy-two degrees, thirty-one and one-half minutes west (N. 72° 31½′ W.) one hundred ten and no-tenths (110.0) feet to a point; thence south seventeen degrees,
8 seven and one-half minutes west (S. 17° 07½′ W.) nine hundred ninety and one-tenth (990.1) feet to an iron pipe marking the point of curve to the left; thence along said curve to the left having a radius of ten thousand five hundred nine and five-tenths (10,509.5) feet a distance of one hundred ninety-five and one-tenth (195.1) feet to an iron pipe being the point of compound curve to the left; thence along said curve to the left having a radius of seven

thousand nine hundred five and one-tenth (7,905.1) feet a distance of one hundred sixty-three and nine-tenths (163.9) feet to an iron pipe in the west line of U. S. Survey 604; thence south thirteen degrees, four minutes west (S. 13° 04′ W.) two thousand one hundred eighty-five and eight-tenths (2,185.8) feet along said west line of U. S. Survey 604 to a point marking the intersection of the west line of U. S. Survey 604 and the center line of Bissell Street in the City of Madison, said point being the southwest corner of U. S. Survey 604; thence south seventy-two degrees, eleven minutes east (S. 72° 11′ E.) twenty-five and eight-tenths (25.8) feet along said center line of Bissell Street and the south line of U. S. Survey 604; thence south seven degrees no minutes west (S. 7° 00′ W.) one thousand two hundred seventeen and six-tenths (1,217.6) feet to an iron pipe marking the intersection of the west right-of-way line of The Alton Railroad and the north right-of-way line of the Merchants Bridge (Terminal Railroad Association of St. Louis); thence north eighty-nine degrees, twenty-one minutes west (N. 89° 21′ W.) six hundred forty-eight and five-tenths (648.5) feet along said north right-of-way line of the Merchants Bridge (Terminal Railroad Association of St. Louis) to an iron pipe marking the point of curve to the left; thence along said curve to the left having a radius of two thousand nine hundred sixty-four and nine-tenths (2,964.9) feet a distance of nine hundred thirty-four and no tenths (934.0) feet to a point; thence south seventy-two degrees, thirty-six minutes west (S. 72° 36′ W.) one thousand two hundred eighty-eight and no tenths (1,288.0) feet, more or less, to a point marking the intersection of the north right-of-way line of the Merchants Bridge (Terminal Railroad Association of St. Louis) and the ordinary high water mark of the Mississippi River; thence, along said ordinary high water mark of the Mississippi River, north ten degrees, forty-nine minutes west (N. 10° 49′ W.) one hundred twelve and three-tenths (112.3) feet; thence north twenty-one degrees, thirty-two and one-half minutes west (N. 21° 32½′ W.) one hundred twenty-two and six-tenths (122.6) feet; thence north no degrees, twenty-nine minutes east (N. 0° 29′ E.) one hundred eighteen and no tenths (118.0) feet; thence north twenty-two degrees, twenty-three minutes west (N. 22° 23′ W.) one hundred sixty-five and five-tenths (165.5) feet; thence north forty-two degrees, twenty-eight minutes west (N. 42° 28′ W.)

eighty and no tenths (80.0) feet; thence north nineteen degrees, twenty-seven minutes west (N. 19° 27′ W.) five hundred seventy-five and five-tenths (575.5) feet; thence north nineteen degrees, twenty-six and one-half minutes west (N. 19° 26½′ W.) two hundred forty-seven and five-tenths (247.5) feet; thence north thirty degrees, thirty-seven and one-half minutes west (N. 30° 37½′ W.) three hundred sixteen and one-tenth (316.1) feet; thence north twenty-eight degrees, twelve and one-half minutes west (N. 28° 12½′ W.) six hundred seven and one-tenth (607.1) feet; thence north twenty-five degrees, forty-two and one-half minutes west (N. 25° 42½′ W.) seven hundred eighty-one and three-tenths (781.3) feet; thence north twenty-nine degrees, twenty-nine minutes west (N. 29° 29′ W.) seven hundred ninety and three-tenths (790.3) feet; thence north forty-seven degrees, twenty-one and one-half minutes west (N. 47° 21½′ W.) four hundred forty-seven and three-tenths (447.3) feet to a point marking the intersection of the ordinary high water mark of the Mississippi River and the thalweg of Cabaret Chute; thence, along said thalweg of Cabaret Chute, north forty-three degrees, fifty-seven minutes east (N. 43° 57′ E.) one hundred thirty and nine-tenths (130.9 feet, more or less; thence north twenty-four degrees, thirty-seven minutes east (N. 24° 37′ E.) one
9 hundred ninety and one-tenth (190.1) feet; thence north forty-one degrees, forty and one-half minutes east (N. 41° 40½′ E.) two hundred nineteen and six-tenths (219.6) feet; thence north one degree, forty-two and one-half minutes east (N. 1° 42½′ E.) two hundred one and one-tenth (201.1) feet; thence north nine degrees, twenty-four minutes west (N. 9° 24′ W.) one hundred forty and nine-tenths (140.9) feet; thence north twenty degrees, eight and one-half minutes west (N. 20° 08½′ W.) two hundred twelve and no tenths (212.0) feet; thence north forty-one degrees, twenty-seven minutes west (N. 41° 27′ W.) two hundred five and five-tenths (205.5) feet; thence north nineteen degrees, twenty-one and one-half minutes west (N. 19° 21½′ W.) three hundred seventy-four and two-tenths (374.2) feet; thence north twenty-two degrees, three minutes west (N. 22° 03′ W.) two hundred fifty-five and seven-tenths (255.7) feet; thence north seven degrees, fifty-nine and one-half minutes west (N. 7° 59½′ W.) four hundred two and eight-tenths (402.8) feet; thence north twelve degrees, twenty-nine and one-half minutes west (N. 12° 29½′

W.) one hundred eighty and three-tenths (180.3) feet; thence north sixteen degrees, fifty-three minutes east (N. 16° 53′ E.) one hundred seventy-five and six-tenths (175.6) feet; thence north five degrees, forty-nine and one-half minutes east (N. 5° 49½′ E.) two hundred forty-six and three-tenths (246.3) feet; thence north nineteen degrees, fifty-nine minutes east (N. 19° 59′ E.) two hundred thirty-four and no tenths (234.0) feet; thence north thirty-seven degrees, one and one-half minutes east (N. 37° 01½′ E.) four hundred fifty-three and three-tenths (453.3) feet; thence north sixty-one degrees, five and one-half minutes east (N. 61° 05½′ E.) two hundred twenty-nine and six-tenths (229.6) feet; thence north seventy-one degrees, fifty-seven minutes east (N. 71° 57′ E.) two hundred eighty and eight-tenths (280.8) feet; thence north sixty-seven degrees, twelve minutes east (N. 67° 12′ E.) one hundred seventy and three-tenths (170.3) feet; thence north fifty-five degrees, one-half minute east (N. 55° 00½′ E.) two hundred seven and five-tenths (207.5) feet; thence north eighty-five degrees, fifty-four minutes east (N. 85° 54′ E.) two hundred twenty-three and six-tenths (223.6) feet; thence north seventy-four degrees, fifty-one minutes east (N. 74° 51′ E.) two hundred thirty-three and no tenths (233.0) feet; thence north forty-five degrees, twelve minutes east (N. 45° 12′ E.) forty-three and one-tenth (43.1) feet; thence north forty-five degrees, eleven and one-half minutes east (N. 45° 11½′ E.) seventy-one and nine-tenths (71.9) feet; thence north forty-one degrees, fifty-four and one-half minutes east (N. 41° 54½′ E.) one hundred sixty-three and nine-tenths (163.9) feet; thence north thirty-two degrees, eleven minutes east (N. 32° 11′ E.) four hundred one and nine-tenths (401.9) feet; thence north twenty-six degrees, fifteen minutes east (N. 26° 15′ E.) two hundred fifteen and four-tenths (215.4) feet; thence north thirty-four degrees, fifty-seven minutes east (N. 34° 57′ E.) one hundred eighty-two and eight-tenths (182.8) feet; thence north twenty-four degrees, three minutes east (N. 24° 03′ E.) two hundred three and seven-tenths (203.7) feet; thence north thirty-one degrees, fifteen and one-half minutes east (N. 31° 15½′ E.) two hundred two and four-tenths (202.4) feet; thence north forty-eight degrees, fifty-six and one-half minutes east (N. 48° 56½′ E.) two hundred five and five-tenths (205.5) feet; thence north eighteen degrees, nine and one-half minutes east (N. 18° 09½′ E.) one hundred ninety-five and eight-

tenths (195.8) feet; thence north thirty-seven degrees, twenty-two minutes east (N. 37° 22′ E.) two hundred seven and six-tenths (207.6) feet; thence north twenty-six degrees, nineteen minutes east (N. 26° 19′ E.) four hundred eight and three-tenths (408.3) feet; thence north nine degrees, twenty-one minutes west (N. 9° 21′ W.) two hundred fifty-two and four-tenths (252.4) feet; thence north thirty-nine degrees, seven and one-half minutes east (N. 39° 07½′ E.) one hundred ninety-three and three-tenths (193.3) feet;

10 thence north fourteen degrees, fifty-five minutes east (N. 14° 55′ E.) two hundred five and nine-tenths (205.9) feet; thence north twenty-five degrees, thirteen minutes east (N. 25° 13′ E.) one hundred seventy-one and three-tenths (171.3) feet; thence north thirty-nine degrees, twenty-five and one-half minutes east (N. 39° 25½′ E.) three hundred eighty-five and eight-tenths (385.8) feet; thence north sixty-one degrees, fifty-nine minutes east (N. 61° 59′ E.) one hundred seventy-six and seven-tenths (176.7) feet; thence north thirty-eight degrees, forty-nine and one-half minutes east (N. 38° 49½′ E.) one hundred five and two-tenths (105.2) feet to a point marking the intersection of the thalweg of Cabaret Chute and the north line of the property being described; thence east two thousand three hundred fifty-three and nine-tenths (2,353.9) feet along said north line to an iron pipe in the east right-of-way line of East Side Levee and Sanitary District; thence south twenty-two degrees, four minutes west (S. 22° 04′ W.) one thousand five hundred forty-one and nine-tenths (1,541.9) feet to an iron pipe marking the intersection of said east right-of-way line of East Side Levee and Sanitary District and the north line of Neidringhaus Avenue; thence north eighty-nine degrees, forty-two and one-half minutes east (N. 89° 42½′ E.) one thousand two hundred two and one-tenth (1,202.1) feet along the north line of Neidringhaus Avenue to the point of beginning, containing one thousand one hundred fifty-two and nine-tenths (1,152.9) acres, more or less.

GRANITE CITY

Neidringhaus Ave

Olive St

Chicago Ave

Cedar St

30" Conc Sewer Pipe

42" Conc Sewer Pipe

Iron Pipe

N 61°59'E 363.0'

S 40°15'½W 760.7'

S 89°43'W 60.7'

72" Conc Sewer Pipe

36" Conc Sewer Pipe

S 40°15'½W 866.2'

R = 9167.8' L = 1410.8'

City Limits of Granite City

City Limits of Madison

S 37°56'E 29.6'

U.S. Survey 604

R = 9158.8'
L = 824.0'

N 72°31'½W 110.0'

S 17°07'½W 990.1'

R = 10,509.5'
L = 185.1'

R = 7495.1'
L = 163.9'

E St Louis & Interurban Water Co.
(48" Conic Pipe)

100' Conc Sewer Pipe

N 85°42'½E 1282.1'

S 22°04'W 1541.9'

Existing Levee

Union Electric Co of Illinois
(Transmission Line)

St. Louis & Alton River Road

CABARET

S 22°E 105.2'

76.7'

Fuel Corp Line)

Sewer ditch)

11523 Acres

Madison

VENICE

Wagner Ave

City Limits of Venice

City Limits of Madison

College Ave

3rd

2nd

S 15°03'W 218.8'

Granite St

S 72°11'E 23.8'

1st

Bissell St

S 7°00'W

(48" Conic Pipe)

100' Conic Sewer

N 85°42'E

S 22°04'W 1541.9'

City Limits of Granite City

Existing Levee

Union Electric Co of Illinois
(Transmission Line)

St. Louis & Alton River Road

S 17°07'½W 990.1'

R = 10,509.5'
L = 185.1'

R = 7495.1'
L = 163.9'

College Ave

S 15°03'W 218.8'

S 72°11'E 23.8'

Granite St

Bissell St

S 7°00'W

CABARET

ISLAND

N 38°48'E 105.2'

N 61°59'E 176.7'

N 59°25'½E 365.8'

N 25°15'E 171.9'

N 4°55'E 205.9'

N 59°07'½E 193.5'

N 5°21'W 252.4'

N 26°19'E 400.3'

N 37°22'E 207.6'

N 18°09'E 135.6'

N 40°36'½E 205.5'

N 31°15'½E 202.4'

N 24°03'E 205.7'

N 36°57'E 182.8'

N 26°15'E 215.4'

N 37°11'E 401.9'

N 4°54½'E 163.5'

N 45°11'E 71.9'

N 45°12'E 431.1'

N 74°51'E 223.0'

N 85°54'E 223.6'

N 35°00'½E 207.5'

N 67°12'E 170.5'

N 71°53'E 288.8'

N 60°05'E 229.6'

N 37°01'E 453.5'

N 19°54'E 234.0'

N 5°41'E 246.3'

N 14°55'E 176.6'

N 27°29'W 186.3'

N 7°59'W 402.8'

N 22°03'W 255.7'

N 19°21'W 374.2'

N 61°27'W 205.5'

N 20°08'W 212.0'

N 5°24'W 140.9'

N 4°40'E 219.6'

N 26°57'E 198.1'

N 45°57'E 183.5'

N 67°21'W 447.3'

Mississippi River Fuel Corp
(10" Gas Pipe Line)

Granite City Sewer
(Paved Open Ditch)

City Limits of Madison

22 | 23
27 | 26

℄ Proposed Levee

Laclede Power & Light Co
(10" Gas Line)

Thalwag of Cabaret Chute

CHUTE

Ordinary High Water Mark

MISSISSIPPI

RIVER

N 25°45½'W 781.3'

N 78°12½'W 607.1'

N 80°57½'W 346.1'

N 69°24½'W 447.5'

BY	DATE	
H.L.G.	2-1-43	Iron pipes added at
L.G.	12-21-42	Course of N.W. corner N 61°59'E 176.7' Course of S.W. corner S 12°56'W 1288.0'

ENGINEER BRANCH DEPOT

GRANITE CITY, ILLINOIS

LOCATION OF EXISTING UTILITIES

SCALE

ST. LOUIS MISSOURI ENGINEER DISTRICT — SEPTEMBER 1942

SUBMITTED	RECOMMENDED	APPROVED
Thomas J. Gray	A. F. Lawson	W. B. Seagrave
ENGINEER	MAJOR, CORPS OF ENGINEERS	LT. COL., CORPS OF ENGINEERS, DIST. ENGINEER

DRAWN BY D.L.D. — CHECKED BY G.W.K.

BY	DATE	CHARACTER REVISIONS
H.L.G.	2-1-43	Iron pipes added at some property angle points.
L.G.	12-21-42	Course at N.W. corner changed from N. 61°58' E. 176.7' to N. 61°59' E. 176.7'. Course at S.W. corner changed from S. 32°06' W. 1758.9' to S. 72°36' W. 1288.0'.

12 And afterwards, to wit: on the 12th day of November, A. D. 1942, there was filed in the office of the clerk of said court a certain Declaration of Taking No. 1, which said Declaration was and is in the words and figures, following, to wit:

13 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—228) * *

DECLARATION OF TAKING.

To the Honorable, the United States District Court:

I, Henry L. Stimson, Secretary of War of the United States, do hereby declare that:

1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U. S. C. sec. 258a), and acts supplementary thereto and anmendatory thereof, and under the further authority of the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241), and April 11, 1918 (40 Stat. 518, 50 U. S. C. sec. 171), which acts authorize the acquisition of land for military purposes, and the Act of Congress approved December 17, 1941 (Public Law 353—77th Congress) which act appropriated funds for such purposes.

(b) The public uses for which said lands are taken are as follows: The said lands are necessary adequately to provide for the construction of an engineering depot and for other military uses incident thereto. The said lands have been selected by me for acquisition by the United

14 States for use in connection with the establishment of the Granite City Engineer Branch Depot in the County of Madison, State of Illinois, and for such other uses as may be authorized by Congress or by Executive Order, and are required for immediate use.

2. A general description of the lands being taken is set forth in Schedule "A" attached hereto and made a part hereof and is a description of part of the same lands in the petition in the above entitled cause.

3. The estate taken for said public uses is the full fee simple title thereto, subject however to existing easements for public roads and highways, for public utilities, for railroads, and for pipe lines.

4. A plan showing the lands taken is annexed hereto as Schedule "B" and made a part hereof.

5. The sum estimated by me as just compensation for said land, with all buildings and improvements thereon and all appurtenances thereto, and including any and all interests hereby taken in said lands, is set forth in Schedule "A" herein, which sum I cause to be deposited herewith in the Registry of said Court for the use and benefit of the persons entitled hereto. I am of the opinion that the ultimate award for said lands will probably be within any limits prescribed by law as the price to be paid therefor.

In Witness Whereof, the petitioner, by its Secretary of War, thereunto authorized, has caused this declaration to be signed in its name by said Henry L. Stimson, Secretary of War, this the 27th day of October, A. D., 1942, in the City of Washington, District of Columbia.

Henry L. Stimson,
Secretary of War of the United States.

Indorsed, Filed Nov. 12, 192, G. W. Schwaner, Clerk.

15 Schedule "A".

The land which is the subject matter of this Declaration of Taking aggregates 644.30 acres, more or less, situate and being in the County of Madison, State of Illinois. A description of the lands taken, together with a list of the purported owners thereof and a statement of the sum estimated to be just compensation therefor is as follows:

Tract ED-1.

Description:

Land described as follows, being a part of the SE¼ of Sec. 27 and the SW¼ of Sec. 26, T. 3 N., R. 10 W of the 3rd PM in Madison County, Illinois: Starting at the northwest corner of the U. S. Survey 604, thence south 13 degrees 04′ West 4355.8′, thence south 72°11′ E. 25.8′, thence South 7° West 1217.6′, thence North 89°21′ West 1119.5′, thence South 72°36′ West 934.2′ to point of beginning; thence South 72°36′ West 824.7′ plus or minus, thence North 10°49′ West 112.3′, thence North 21°32½′ West 122.6′, thence North 0°29′ East 118.0′ thence North 22°23′ West 165.5′, thence North 42°28′ West 80.0′, thence North 19°27′ West 575.5′, thence North 65°55′ East 892.4′ plus or minus, thence South 15°54′ East 1262.8′ to point of beginning.

Name of purported owner: Madison County Ferry Company.

Address of purported owner: c/o Francis, Perry, Ruth, 110 North Seventh Street, St. Louis, Missouri.

Estimated Compensation: $7,017.00.

Tract ED-4.

Description:

Land described as follows, being a part of Section 26 and 27, Township 3 North, Range 10 West of the 3rd PM in Madison County, Illinois:

Starting at the northwest corner of U. S. Survey 604, thence South 13 degrees 4′ West 3093.3′ to point of beginning; thence South 13 degrees 4′ West 1262.4′ thence South 72 degrees 11′ East 25.8′, thence South 7 degrees West 1217.6′, thence North 89 degrees 21′ West 242.1′ thence North 4 degrees 32½′ West 63.6′, thence North 12 degrees 28′ East 577.3′, thence North 4 degrees 6′ East 266′, thence North 3 degrees 1½′ West 245′, thence South 88 degrees 25′ West 1930.9, thence South 65 degrees 55′ West 1232.2′, plus or minus, thence North 19 degrees 26½′ West 247.5′, thence North 30 degrees 37½′ West 316.1′, thence North 28 degrees 12½′ West 607.1′, thence North 25 degrees 42½′ West 781.3′, thence North 29 degrees 29′ West 790.3′ thence North 47 degrees 21½′ West 447.3′, plus or minus, thence North 43 degrees 57′ East 130.9′, thence North 71 degrees 54′ East 3141.8′, thence North 88 degrees 24½′ East 1163.8′, thence South 3 degrees 33′ West 190.8, thence South 11 degrees 10½′ East 101.3′, thence South 16 degrees 44½′ East 100.2′, thence South 13 degrees 58′ East 100.5′, thence South 14 degrees 3′ East 100.5′, thence South 24 degrees 38′ 16 East 121.9′, thence South 40 degrees 27′ East 105.7′, thence South 40 degrees 47′ East 100.1′, thence South 37 degrees 49½′ East 300.5′, thence South 37 degrees 51½′ East 200.5′, thence South 37 degrees 54′ East 200.5′, thence South 37 degrees 55½′ East 200.3′, thence South 41 degrees 19½′ East 97.9′, thence South 1 degree 19½′ East 169.8′, thence South 4 degrees 34½′ East 234.1′, thence South 76 degrees 56′ East 80′ to point of beginning.

Name of Purported Owner: The Southern Railway Company.

Address of Purported Owner: Washington, D. C.

Estimated Compensation: $55,174.00.

Name of Tenant: W. E. Gant.

Address of Tenant: c/o W. E. Gant Commission Company, National Stock Yards, Illinois.

Tract ED-7.

Description:

Land in Sections 22, 23, 26 and 27 in T. 3 N., R. 10 W. of the 3rd PM in Madison County, Illinois:

Starting at the intersection of the East and West center line of Section 23 with the East line of Section 23, thence South 89 degrees 17 minutes West 2158.1 feet to point of beginning; thence South 9 degrees 11 minutes East 1764 feet, thence South 81 degrees 36 minutes West 15 feet, thence South 7 degrees 35½ minutes East 798.2 feet; thence South 4 degrees 2½ minutes East 126.4 feet, thence South 88 degrees 24½ minutes West 1852.3 feet; thence South 71 degrees 54 minutes West 3141.8 feet, thence North 24 degrees 37 minutes East 190.1 feet, thence North 41 degrees 40½ minutes East 219.6 feet, thence North 1 degree 42½ minutes East 201.1 feet, thence North 9 degrees 24 minutes West 140.9 feet, thence North 20 degrees 8½ minutes West 212 feet thence North 41 degrees 27 minutes West 205.5 feet, thence North 19 degrees 21½ minutes West 374.2 feet, thence North 22 degrees 3 minutes West 255.7 feet, thence North 7 degrees 59½ minutes West 402.8 feet, thence North 12 degrees 29½ minutes West 180.3 feet, thence North 16 degrees 53 minutes East 175.6 feet, thence North 5 degrees 49½ minutes East 246.3 feet, thence North 19 degrees 59 minutes East 234 feet, thence North 37 degrees 1½ minutes East 453.3 feet, thence North 61 degrees 5½ minutes East 229.6 feet, thence North 71 degrees 57 minutes East 280.8 feet, thence North 67 degrees 12 minutes East 170.3 feet, thence North 55 degrees ½ minute East 207.5 feet, thence North 85 degrees 54 minutes East 223.6 feet, thence North 74 degrees 51 minutes East 233 feet, thence North 89 degrees 17 minutes East 3101.2 feet to point of beginning.

Name of Purported Owner: Cool Land Syndicate.

Address of Purported Owner: c/o Mr. F. Pitzman, 615 Chestnut Street, St. Louis, Missouri.

Estimated Compensation: $43,579.00.

17 Names and Addresses of Tenants:

Mr. H. Onstott, 1456 Cleveland Avenue, East St. Louis, Illinois,

Mr. C. H. Knebel, 1147 Broadway, Highland, Illinois,

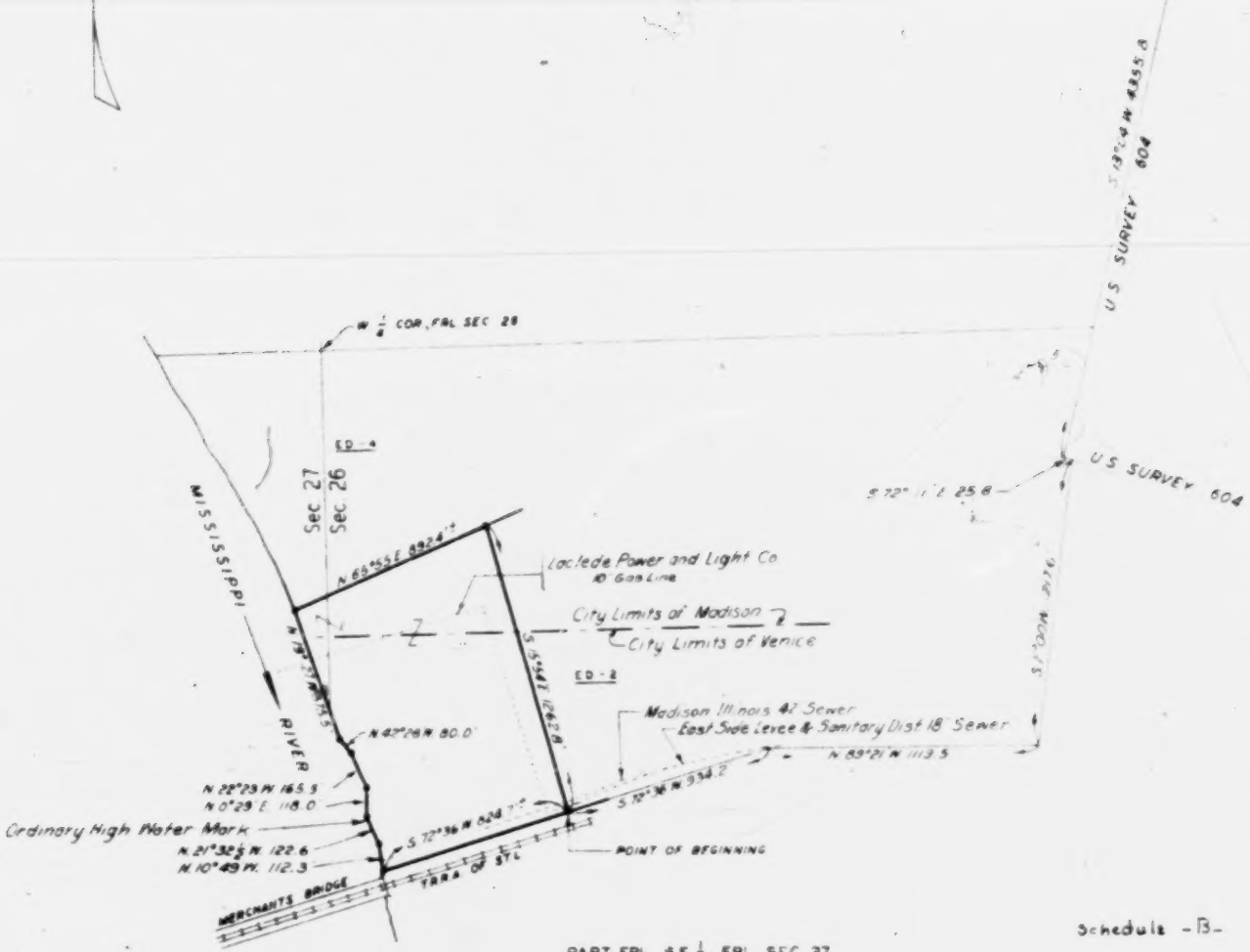
Mr. Kiro Naumoff, 1245 Niedringhaus Avenue, Granite City, Illinois,

Mr. Robert Brady, Box 437, Venice, Illinois.

The gross sum estimated to be just compensation for the lands hereby taken in $105,770.00.


STONE
WITNESS POINT
NW COR. U.S SURVEY 604
U.S SURVEY 604
N
U.S SURVEY 604
S 13° 04' W 4355.0
U.S SURVEY 604
S 72° 41' E 25.8
U.S SURVEY 604
S 7° 04' W 1215.6
W ¼ COR. FRL SEC 26
ED - 4
Sec 27
Sec 26
MISSISSIPPI
RIVER
N 83°45' E 892.4'
Laclede Power and Light Co
10' Gas Line
City Limits of Madison
City Limits of Venice
S 59°41' W 1262.6'
ED - 3
N 42°24' W 80.0'
Madison Illinois 42" Sewer
East Side Levee & Sanitary Dist 18" Sewer
N 89°21' W 1113.5
N 22°23' W 165.5
N 0°29' E 118.0
Ordinary High Water Mark
N 21°32½' W 122.6
N 10°49' W 112.3
S 72°36' W 824.7'
S 72°36' W 234.0'
POINT OF BEGINNING
MERCHANTS BRIDGE
TERRA CE STL

Schedule -B-



Schedule -B-

PART FRL SE ¼, FRL SEC 27
AND
PART FRL SW ¼, FRL SEC 28

LYING WITHIN CORPORATE LIMITS OF MADISON AND VENICE
TWP 3N, R10W OF THE 3RD P M
MADISON COUNTY, ILLINOIS

INTEREST TO BE ACQUIRED — FEE SIMPLE

REPUTED OWNER MADISON COUNTY FERRY COMPANY
AREA OF TRACT 23.39 ACRES

ENGINEER BRANCH DEPOT
LAND ACQUISITION

TRACT NO ED-1

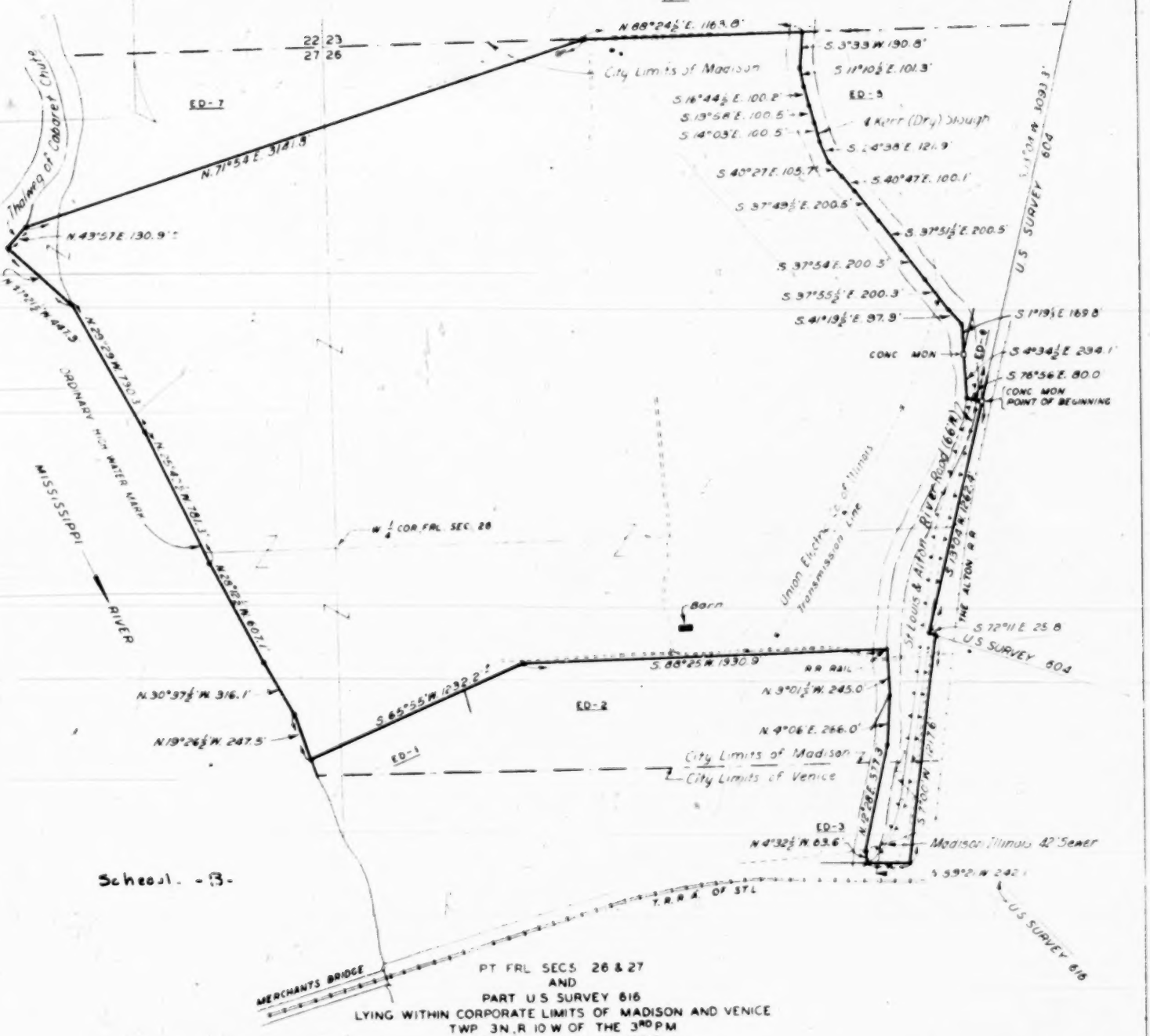
SCALE 1 4800

400 0 400 800

ST LOUIS MISSOURI ENGINEER DISTRICT JUNE 1942

SUBMITTED [signature] APPROVED [signature]

I certify that this is an accurate map of Tract ED-1 based on FIELD SURVEY & DEED DESCRIPTION which shows this tract to contain 23.39 acres
Name [signature]
Title [signature]



PT FRL SECS 26 & 27
AND
PART U S SURVEY 816
LYING WITHIN CORPORATE LIMITS OF MADISON AND VENICE
TWP 3N, R 10 W OF THE 3RD P M
MADISON COUNTY, ILLINOIS

INTEREST TO BE ACQUIRED – FEE SIMPLE

REPUTED OWNER SOUTHERN RAILWAY COMPANY
AREA OF TRACT 302 27 ACRES

ENGINEER BRANCH DEPOT
LAND ACQUISITION

TRACT NO ED-4

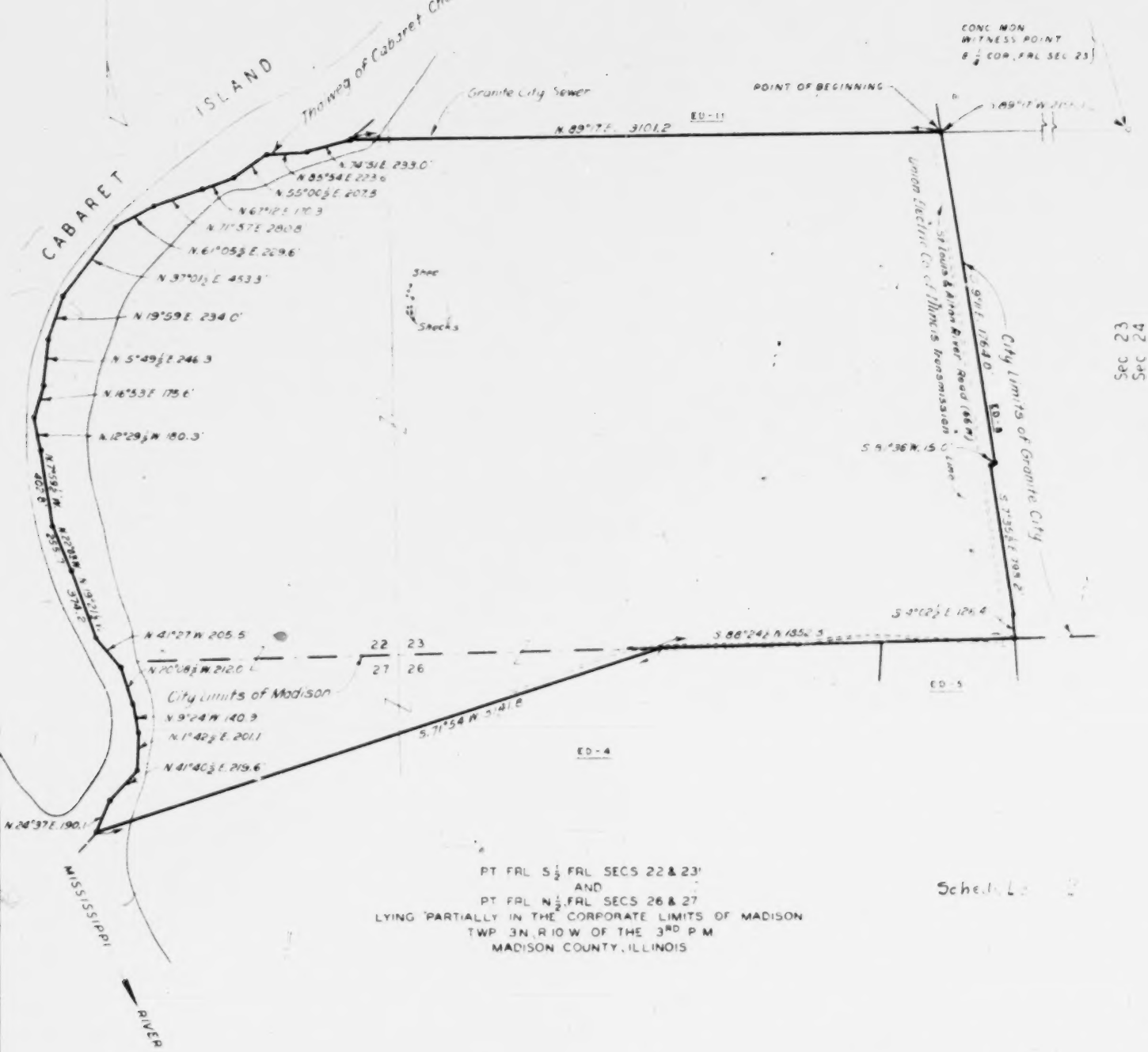
SCALE 1 INCH

400 0 400 800

I certify that this is an accurate map of Tract ED-4 based on FIELD SURVEY & DEED DESCRIPTION which shows this tract to contain 302.27 acres

ST LOUIS MISSOURI ENGINEER DISTRICT JUNE 1942

SUBMITTED _____ APPROVED _____



PT FRL S½ FRL SECS 22 & 23
AND
PT FRL N½ FRL SECS 26 & 27
LYING PARTIALLY IN THE CORPORATE LIMITS OF MADISON
TWP 3N R 10 W OF THE 3RD P M
MADISON COUNTY, ILLINOIS

Schedule 2

INTEREST TO BE ACQUIRED – FEE SIMPLE

REPUTED OWNER COOL LAND SYNDICATE

AREA OF TRACT 318.84 ACRES

I certify that this is an accurate map of Tract ED-7 based on the Survey, Deed Description & Plat

ENGINEER BRANCH DEPOT
LAND ACQUISITION

TRACT NO ED-7

SCALE 1 400

400 0 400 800

ST LOUIS MISSOURI ENGINEER DISTRICT JUNE 1942

21 And afterwards, to wit: on the 12th day of November, A. D. 1942, the following further proceedings were had in said court in said case and were entered of record, to wit:

22 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—228) * *

JUDGMENT ON FIRST DECLARATION OF TAKING.

This cause coming on for hearing upon motion of Howard L. Doyle, United States Attorney in and for the Southern District of Illinois, Attorney for the Petitioner herein, for a Judgment on the Declaration of Taking filed herein, and now upon due consideration thereof, and of the Petition and Declaration of Taking filed herein, and the Statutes in such case made and provided, and it appearing to the satisfaction of the Court:

First: That the United States of America is entitled to acquire property by condemnation under judicial process for the purposes as set forth and prayed in said petition;

Second: That the Declaration of Taking filed herein contains or has annexed thereto a statement of the authority under which, and the public use for which, the lands hereinafter described are taken, a description of said lands sufficient for the identification thereof, a statement of the estate of interest taken for said public use, a plat showing the lands taken, and a statement of the sum of money estimated by the Secretary of War to be just compensation for the lands taken, to-wit $105,770.00 and

23 that the said sum of money has been deposited in the Registry of this court for the use and benefit of the persons entitled thereto;

Third: That the said Declaration of Taking filed herein contains a statement that the Secretary of War, the head of the acquiring agency, is of the opinion that the ultimate award of just compensation will be within the limits prescribed by Congress as the price to be paid therefor.

Now, Therefore, It Is Ordered, Adjudged And Decreed that the title to the said lands in fee simple absolute, and together with the buildings and improvements thereon and the appurtenances thereunto appertaining, subject only to

existing easements for public roads and highways, for public utilities, for railroads and for pipe lines, veseted in the United States of America upon the filing of the said Declaration of Taking and the depositing in the Registry of this Court of the amount of estimated just compensation, to-wit, the sum of $105,770.00, which said lands are described as follows:

Tract ED-1: Land described as follows, being a part of the SE¼ of Sec. 27 and the SW¼ of Sec. 26, T. 3 N., R. 10 W of the 3rd PM in Madison County, Illinois:

Starting at the northwest corner of the U. S. Survey 604, thence South 13 degrees 04′ West 4355.8′, thence south 72°11′ E. 25.8′, thence South 7° West 1217.6′, thence North 89° 21′ West 1119.5′, thence South 72°36′ West 934.2′ to point of beginning; thence South 72°36′ West 824.7′ plus or minus, thence North 10°49′ West 112.3′, thence North 21°32½′ West 122.6′, thence North 0°29′ East 118.0′, thence North 22°23′ West 165.5′, thence North 42°28′ West 80.0′, thence North 19°27′ West 575.5′, thence North 65°55′ East 892.4′ plus or minus, thence South 15°54′ East 1262.8′ to point of beginning.

Tract ED-4: Land described as follows, being a part of Section 26 and 27, Township 3 North, Range 10 West of the 3rd PM in Madison County, Illinois:

Starting at the northwest corner of U. S. Survey 604, thence South 13 degrees 4′ West 3093.3′ to point of beginning; thence South 13 degrees 4′ West 1262.4′ thence South 72 degrees 11′ East 25.8′, thence South 7 degrees West 1217.6′, thence North 89 degrees 21′ West 242.1′ thence North 4 degrees 32½′ West 63.6′, thence North 12 degrees 28′ East 577.3′, thence North 4 degrees 6′ East 266′, thence North 3 degrees 1½′ West 245′, thence South 88 degrees 25′ West 1930.9′, thence South 65 degrees 55′ West 1232.2′, plus or minus, thence North 19 degrees 26½′ West 247.5′, thence North 30 degrees 37½′ West 316.1′, thence North 28 degrees 12½′ West 607.1′, thence North 25 degrees 42½′ West 781.3′, thence North 29 degrees 29′ West 790.3′, thence North 47 degrees 21½′ West 447.3′, plus or minus, thence North 43 degrees 57′ East 130.9′, thence North 71 degrees 54′ East 3141.8′, thence North 88 degrees 24½′ East 1163.8′, thence South 3 degrees 33′ West 190.8, thence South 11 degrees 10½′ East 101.3′, thence South 16 degrees 44½′ East 100.2′, thence South 13 degrees 58′ East 100.5′, thence South 14 degrees 3′ East 100.5′,

thence South 24 degrees 38′ East 121.9′, thence South 40 degrees 27′ East 105.7′, thence South 40 degrees 47′ East 100.1′, thence South 37 degrees 49½′ East 300.5′, thence South 37 degrees 51½′ East 200.5′, thence South 37 degrees 54′ East 200.5′, thence South 37 degrees 55½′ East 200.3′, thence South 41 degrees 19½′ East 97.9′, thence South 1 degree 19½′ East 169.8′, thence South 4 degrees 34½′ East 234.1′, thence South 76 degrees 56′ East 80′ to point of beginning.

Tract ED-7: Land in Sections 22, 23, 26 and 27 in T. 3 N., R. 10 W. of the 3rd PM in Madison County, Illinois:

Starting at the intersection of the East and West center line of Section 23 with the East line of Section 23, thence South 89 degrees 17 minutes West 2158.1 feet to point of beginning; thence South 9 degrees 11 minutes East 1764 feet, thence South 81 degrees 36 minutes West 15 feet, thence South 7 degrees 35½′ minutes East 798.2 feet; thence South 4 degrees 2½ minutes East 126.4 feet, thence South 88 degrees 24½ minutes West 1852.3 feet; thence South 71 degrees 54 minutes West 3141.8 feet, thence North 24 degrees 37 minutes East 190.1 feet, thence North 41 degrees 40½′ east 219.6 feet, thence North 1 degree 42½ minutes East 201.1 feet, thence North 9 degrees 24 minutes West 140.9 feet, thence North 20 degrees 8½ minutes West 212 feet thence North 41 degrees 27 minutes West 205.5 feet, thence North 19 degrees 21½ minutes West 374.2 feet, thence North 22 degrees 3 minutes West 255.7 feet, thence North 7 degrees 59½ minutes West 402.8 feet, thence North 12 degrees 29½ minutes West 180.3 feet, thence North 16 degrees 53 minutes East 173.6 feet, thence North 5 degrees 49½ minutes East 246.3 feet, thence North 19 degrees 59 minutes East 234 feet, thence North 37 degrees 1½ minutes East 453.3 feet, thence North 61 degrees 5½ minutes East 229.6 feet, thence North 71 degrees 57 minutes East 280.8 feet, thence North 67 degrees 12 minutes East 170.3 feet, thence North 55 degrees ½ minute East 207.5 feet, thence North 85 degrees 54 minutes East 223.6 feet, thence North 74 degrees 51 minutes East 233 feet, thence North 89 degrees 17 minutes East 3101.2 feet to point of beginning.

and that said lands are now deemed to have been condemned and taken for the United States of America, and the right to just compensation for the same is now vested in the persons entitled thereto; and the amount of such just compensation shall be ascertained and awarded in

this proceeding and established by judgment herein pursuant to law.

25 It further appearing to the Court that by order duly entered herein on March 31, 1942, the petitioner herein, United States of America, was granted the right to the possession of the said tracts of land, and each and every part thereof, as of, to-wit, March 31, 1942.

Now Therefore, It Is Further Ordered, Adjudged And Decreed that the possession of said lands, and each and every part thereof, be and the same is hereby confirmed in the said United States of America, the petitioner herein, and this cause is held open for such further and other orders, judgments and decrees as may be necessary and proper in the premises.

Entered this 12th day of November, A. D. 1942, at Springfield, Illinois.

By the Court.

Chas. G. Briggle,
Judge United States District Court,
Southern District of Illinois.

Indorsed, Filed Nov. 12, 1942. G. W. Schwaner, Clerk.

26 And afterwards, to wit: on the 8th day of February, A. D. 1943, the following further proceedings were had in said court in said case and were entered of record, to wit:

27 In the District Court of the United States.

* * (Caption—228) * *

MOTION TO AMEND PETITION.

Comes now the Petitioner, the United States of America, by Howard L. Doyle, United States Attorney for the Southern District of Illinois, and G. R. Schwarz, Special Attorney, Department of Justice, and represents unto the Court as follows:

1. That heretofore on the 31st day of March, 1942, the petition herein was filed seeking to condemn certain lands which were described in Exhibit "A" atnd shown and delineated on the plat marked Exhibit "B" attached to said petition.

2. That subsequent to the filing of the petition a detailed and careful survey has been made of the premises sought to be taken in this action and that for the convenience of the Court and the parties to this cause of action it is necessary and advantageous to amend the said petition by striking therefrom Exhibit "A" and Exhibit "B" and inserting in lieu thereof a New Exhibit "A", which contains a detailed metes and bounds description of the lands herein sought to be taken and by attaching thereto a New Exhibit "B", which is a detailed map of the lands described in New Exhibit "A".

28 Wherefore, Petitioner requests that it may be permitted to amend its petition as above set out.

Respectfully submitted,
United States of America,
Petitioner.
By (Signed) Howard L. Doyle,
United States Attorney,
(Signed) G. R. Schwarz,
Special Attorney Department of Justice.

ORDER.

This cause coming on to be heard upon the above and foregoing motion and it appearing to the Court that the motion is well founded and should be allowed, It Is Therefore Ordered, Adjudged And Decreed By The Court that the Petitioner be permitted to amend its petition herein heretofore filed by striking from the said petition Exhibit "A" and inserting in lieu thereof New Exhibit "A", and by striking from the said petition Exhibit "B" and inserting in lieu thereof New Exhibit "B"; the said petition in all other respects to remain the same.

Enter:

J. Leroy Adair,
Judge Presiding.

Indorsed, Filed Feb. 8, 1943. G. W. Schwaner, Clerk.

29 And afterwards, to wit: on the 2nd day of August, A. D. 1943, the following further proceedings were had in said court in said case and were entered of record, to wit:

30 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—228) * *

ORDER OF PUBLICATION.

Comes now the Petitioner, the United States of America, by Howard L. Doyle, United States Attorney, and G. R. Schwarz, Special Attorney, Department of Justice, and moves the Court for an order authorizing it to secure service of process by publication on the Defendants named in the affidavits heretofore filed and the unknown owners of all Defendants who may have, or claim to have, an interest in the real estate herein sought to be condemned, and now the Court after being sufficiently advised in the premises, and the examination of the affidavits herein filed orders that the Defendants and the unknown owners named in the affidavits be notified of the pendency of this action by publication in the Edwardsville Intelligencer, a secular newspaper of general circulation, published in the City of Edwardsville in Madison County, Illinois, as provided by the Statutes of the State of Illinois.

Enter:

Chas. G. Briggle,
Judge Presiding.

Indorsed, Filed Aug. 2, 1943, G. W. Schwaner, Clerk.

31 And afterwards, to wit: on the 7th day of October, A. D. 1943, there was filed in the office of the clerk of said court, a certain Motion to Vacate Judgment and to Dismiss, which said Motion was and is in the words and figures, following, to wit:

32 IN THE DISTRICT COURT OF THE UNITED STATES.
* * (Caption—228) * *

MOTION TO VACATE JUDGMENT AND TO DISMISS.

Defendants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees under deed dated February 1, 1921, and recorded in the Public Records of Madison County, Illinois, in Book 471, at Page 621, commonly known as the Cool Land Syndicate, move the Court to vacate the judgment as to Tract No. 7 entered herein on November 12, 1942 and to dismiss the petition for condemnation heretofore filed in the above entitled cause, and for grounds for their said motion state:

1. Said petition for condemnation fails to set forth the purpose for which the property described in the exhibit attached thereto, and more specifically Tract No. 7 thereof, is sought to be taken, as provided in Section 2 of Chapter 47 of the Illinois Revised Statutes, 1941.

2. Said petition for condemnation fails to set forth or allege that the Secretary of War has made any finding or determination that the land described in the exhibit to said petition, and particularly Tract No. 7, thereof, is needed for any one or more or all of the purposes for which condemnation is authorized by the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518, 50 U. S. C., Section 171).

33 3. Said petition for condemnation fails to set forth or allege that the Secretary of War has requested the Attorney General of the United States to institute proceedings to acquire the land described in the exhibit to said petition, and particularly Tract No. 7 thereof, for any one or more or all of the purposes for which condemnation is authorized by the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518, 50 U. S. C., Section 171).

4. Defendants state, on information and belief, that the actual purpose for which the land described in the exhibit to said petition, and particularly Tract No. 7 thereof, was sought to be taken and is actually being used, is as a site for the construction and operation of a branch depot, which

is not one of the purposes for which condemnation proceedings may be instituted under said Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518, 50 U. S. C., Section 171).

R. H. McRoberts,
1630 Boatmen's Bank Bldg.,
St. Louis, Mo.,
George D. Burroughs,
Edwardsville, Illinois,
Attorneys for Defendants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees.

Bryan, Williams, Cave & McPheeters,
Warnock, Williamson & Burroughs,
Of Counsel.

Indorsed, Filed Oct. 7, 1943, G. W. Schwaner, Clerk.

34 And afterwards, to wit: on the 17th day of November, A. D. 1943, the following further proceedings were had in said court in said case and were entered of record, to wit:

35 In the District Court of the United States.

* * (Caption—228) * *

Wednesday, November 17, 1943.

Court met pursuant to adjournment.

Present, the Honorable Charles G. Briggle, Judge.

This cause coming on this day to be heard upon the motion of defendants, Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees under deed dated February 1, 1921, to dismiss the petition herein as to Tract No. ED-7, the said defendants by their attorney move the court for leave to amend their motion on the face thereof by making certain interlineations, and the court having duly considered the said motion and being fully advised in the premises, it is ordered by the court that the said

motion be and is hereby allowed, and said amendments being made the plaintiff herein by its attorney makes a cross-motion for leave to amend the petition herein by adding a paragraph designated as IIIA and the court having duly considered the said cross-motion and being fully advised in the premises, it is ordered by the court that the said cross-motion be and is hereby allowed and the said amendment to the petition being filed, on motion of the defendants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees under deed dated February 1, 1921, it is ordered by the court that leave be and is hereby given the said defendants to plead to the said petition as amended by November 22, 1943.

36 And afterwards, to wit: on the 17th day of November, A. D. 1943, there was filed in the office of the clerk of said court, a certain Amendment to Petition for Condemnation, which said Amendment was and is in the words and figures, following, to wit:

37 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—228) * *

AMENDMENT TO PETITION FOR CONDEMNATION.

Now comes the United States of America, Petitioner herein, by Howard L. Doyle, United States Attorney, and G. R. Schwarz, Special Attorney, and leave of Court having first been had and obtained, amends the original petition herein in the following respects, that is to say: By inserting, following Paragraph III of said original petition, an additional paragraph designated as Paragraph III-A, and reading as follows:

"III-A.

That said lands are being taken in this proceeding for the following purposes, to wit, the site, location, construction and prosecution of works for fortifications, coast defenses, military training camps, and for the construction and operation of plants for the production of nitrate and other compounds, and the manufacture of explosives and other munitions of war, and for the development and trans-

mission of power for the operation of such plants, pursuant to the determination of the said Secretary of
38 War that said lands are necessary and essential for such purposes, as is set forth in said letter of said Secretary of War, dated March 26, 1942, a certified copy of which said letter is duly filed herein simultaneously with the filing of this amendment to this petition, and is by this reference thereto incorporated herein the same as though it were set forth in full herein."

United States of America,
Petitioner,
By Howard L. Doyle,
United States Attorney,
G. R. Schwarz,
Special Attorney.

Indorsed, Filed Nov. 17, 1943. G. W. Schwaner, Clerk.

39 And afterwards, to wit: on the 17th day of March, A. D. 1943, there was filed in the office of the clerk of said court, a certain certified copy of a letter from the Secretary of War, which said letter was and is in the words and figures, following, to wit:

40 UNITED STATES OF AMERICA.

Department of Justice.

March 27, 1942.

Pursuant to Title 28, Section 661, U. S. Code (Sec. 882, Revised Statutes), I Hereby Certify that the Annexed Paper Is a True Copy of the Original Record in This Department, of a letter dated March 26, 1942, from the Honorable Henry L. Stimson, Secretary of War, to the Attorney General, requesting that a condemnation proceeding be instituted for the acquisition of 1113 acres of land in Madison County, Illinois, for use in the establishment of the Granite City Engineer Branch Depot, Granite City, Illinois.

In Witness Whereof, I have hereunto set my hand, and caused the seal of the Department of Justice to be affixed, on the day and year first above written.

(Signed) Norman M. Littell,
(Seal) *Assistant Attorney General.*

41 Granite City Engineer Branch Depot, Ill.

U. S. *vs.* Terminal Railroad Assn. of St. Louis, et al.

March 26, 1942.

The Honorable, The Attorney General,
Washington, D. C.

Dear Mr. Attorney General:

It is necessary that certain land located and situated in Madison County, Illinois, be acquired by the United States for use in the establishment of the Granite City Engineer Branch Depot, Granite City, Illinois.

Therefore, pursuant to the provisions contained in the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518; 50 U. S. C. sec. 171), which Act authorizes the acquisition of land for military purposes, and the Act of Congress approved December 17, 1941 (Public Law 353—77th Congress), which Act appropriated funds for such purposes, it is requested that you cause the necessary proceedings to be instituted for the condemnation of the fee simple title to the land referred to above, subject however to existing easements for public roads and highways, for public utilities, for railroads and for pipe lines. The acquisition involves approximately 1,113 acres of land in Madison County, Illinois. The land is described in the inclosed Exhibit "A" and defined on the inclosed map entitled Exhibit "B".

You are advised that the above mentioned land is necessary to provide adequately for the establishment of a supply depot and for related military purposes. You are also advised that it is vital to the successful prosecution of the war that this project be expedited with the utmost haste and that the United States be given the immediate right to the possession and use of the land, the buildings and improvements thereon, and the appurtenances thereto. Consequently, it is requested that you cause the necessary action to be taken to procure an order from the Court granting immediate possession and use pursuant to the provisions of 50 U. S. C. sec. 171.

The Act of Congress approved December 17, 1941 (Pub-

lic Law 353—77th Congress), supra, appropriated funds to acquire the land under consideration.

42 This Department is negotiating for the procurement of title evidence on the above mentioned land, and you will be advised as soon as arrangements have been made.

The names of some of the parties claiming an interest in the land are shown on exhibit "B". Five additional copies of Exhibit "A" and five adidtional copies of Exhibit "B" are also inclosed.

Sincerely yours,
(Signed) Henry L. Stimson,
Secretary of War.

2 Incls.
Exh. "A" (insext.)
Exh. "B" (insext.)

Indorsed, Filed Mar. 17, 1943. G. W. Schwaner, Clerk.

43 And afterwards, to wit: on the 22nd day of November, A. D. 1943, there was filed in the office of the clerk of said court, a certain Amended Motion to Vacate Judgment and to Dismiss, which said Amended Motion was and is in the words and figures, following, to wit:

44 In the District Court of the United States.
* * (Caption—228) * *

AMENDED MOTION TO VACATE JUDGMENT AND TO DISMISS.

Defendants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees under deed dated February 1, 1921, and recorded in the Public Records of Madison County, Illinois, in Book 471, at Page 621, commonly known as the Cool Land Syndicate, move the Court to vacate the judgment as to Tract No. 7 entered herein on November 12, 1942, and to dismiss the petition for condemnation heretofore filed in the above entitled cause, as amended on November 17, 1943, and for grounds for their said motion state:

1. Said petition for condemnation, so amended, sets

forth the purpose for which the property described in the exhibit attached thereto, and more specifically Tract No. 7 thereof, is sought to be taken, as being "for use in the establishment of the Granite City Engineer Branch Depot, Granite City, Illinois" and "for the establishment of a supply depot and for related military purposes." Such purpose or purposes do not constitute one or more of the purposes for which condemnation proceedings may be instituted under said Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Con-
45 gress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518, 50 U. S. C., Section 171), and hence said petition shows on its face that petitioner is without any right, power or authority to institute or prosecute condemnation proceedings under the said Act for such purpose or purposes, that the suit cannot be maintained, that the Court has no jurisdiction over the subject matter of the action and had no jurisdiction to make or enter the judgment, particularly as to Tract No. 7, made and entered herein on November 12, 1942, and that the petition and proceedings should be dismissed.

2. Said petition for condemnation, so amended, fails to set forth or allege that the Secretary of War has made any finding or determination that the land described in the exhibit to said petition, and particularly Tract No. 7 thereof, is needed for any one or more or all of the purposes for which condemnation is authorized by the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Act of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518, 50 U. S. C., Section 171), but, on the contrary, specifically shows that the Secretary of War has made a finding or determination that the said land is needed for a purpose or purposes other than those specified in the said Act.

3. Said petition for condemnation, so amended, fails to set forth or allege that the Secretary of War has requested the Attorney General of the United States to institute proceedings to acquire the land described in the exhibit to said petition, and particularly Tract No. 7 thereof, for any one or more or all of the purposes for which condemnation is authorized by the Act of Congress approved August 18, 1890 (26 Stat. 316), as amended by the Acts of Congress approved July 2, 1917 (40 Stat. 241) and April 11, 1918 (40 Stat. 518, 50 U. S. C., Section 171), but, on the

contrary, specifically shows that the Secretary of War
46 has requested the Attorney General to institute such proceedings for a purpose or purposes other than those specified in the said Act.

R. H. McRoberts,
R. H. McRoberts,
1630 Boatmen's Bank Building,
St. Louis, Missouri,
George D. Burroughs,
George D. Burroughs,
Edwardsville, Illinois,
Attorneys for Defendants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees.
Bryan, Williams, Cave & McPheeters,
Bryan, Williams, Cave & McPheeters,
Warnock, Williamson & Burroughs,
Warnock, Williamson & Burroughs,
Of Counsel.

Indorsed, Filed Nov. 22, 1943. G. W. Schwaner, Clerk.

47 And afterwards, to wit: on the 30th day of November, A. D. 1943, the following further proceedings were had in said court in said case and were entered of record, to wit:

48 In the District Court of the United States.

* * (Caption—218) * *

Tuesday, November 30, 1943.

Court met pursuant to adjournment.

Present, the Honorable Charles G. Briggle, Judge.

Come now the parties to this cause by their respective attorneys, and the court having heretofore heard the arguments of said attorneys on the amended motion of Daniel K. Catlin, et al., to vacate the judgment and to dismiss the petition herein as amended re: Tract No. ED7, and now being fully advised in the premises, it is ordered by the court that the said amended motion be and is hereby denied.

49 And afterwards, to wit: on the 9th day of December, A. D. 1943, there was filed in the office of the clerk of said court, a certain Notice of Appeal which said Notice of Appeal was and is in the words and figures, following, to wit:

50 IN THE DISTRICT COURT OF THE UNITED STATES,

Southern District of Illinois,

Southern Division.

United States of America, *Petitioner,* *vs.* 1,113 Acres of Land, More or Less, Situate in Madison County, Illinois, and Commonwealth Steel Company, a Corporation, *et al.*, *Defendants.*	Civil No. 228.

NOTICE OF APPEAL.

Notice Is Hereby Given That Defendants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees under deed dated February 1, 1921, and recorded in the Public Records of Madison County, Illinois, in Book 471, at Page 621, commonly known as the Cool Land Syndicate, hereby appeal to the United States Circuit Court of Appeals for the Seventh Circuit from

(a) the judgment on declaration of taking made and entered in the above entitled proceedings on November 12, 1942, and more particularly each and every part thereof which relates to or affects, directly or indirectly, the lands owned by said defendants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees as aforesaid, said lands being in said judgment referred to as Tract No. 7, and

(b) the judgment and order made and entered in the above entitled proceedings on November 30, 1943, overruling and denying the amended motion to vacate judgment and to dismiss of said defendants Daniel K. Catlin, Fred-

erick Pitzman and Lewis M. Rumsey, Jr., as Trustees as aforesaid.

R. H. McRoberts,
R. H. McRoberts,
1630 Boatmen's Bank Building,
St. Louis, Missouri,
Geo. D. Burroughs,
Geo. D. Burroughs,
Bank of Edwardsville Building,
Edwardsville, Illinois,
Attorneys for Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees under deed dated February 1, 1921, and recorded in the Public Records of Madison County, Illinois, in Book 471, at Page 621, commonly known as the Cool Land Syndicate.

Bryan, Williams, Cave & McPheeters,
Warnock, Williamson & Burroughs.

Indorsed, Filed Dec. 9, 1943. G. W. Schwaner, Clerk.

51 And afterwards, to wit: on the 27th day of December, A. D. 1943, there was filed in the office of the clerk of said court, a certain Statement of Points on Appeal which said Statement was and is in the words and figures following, to wit:

52 In the District Court of the United States.

* * (Caption—228) * *

STATEMENT OF POINTS ON APPEAL.

Now come Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees under deed dated February 1, 1921, and recorded in the Public Records of Madison County, Illinois, in Book 471, at Page 621, commonly known as the Cool Land Syndicate, and, pursuant to Rule 75(d) of the Rules of Civil Procedure for the District Courts of the United States and Rule 9 of the Rules of the United States Circuit Court of Appeals, file this Statement of Points on Appeal from the judgment on declaration of taking made and entered in the above entitled proceedings on November 12, 1942, and the judgment and order made and entered on November 30, 1943, over-

ruling and denying the Amended Motion to Vacate Judgment and to Dismiss. Said points are as follows:

1. The Court erred in making and entering on November 12, 1942, the judgment on Declaration of Taking No. 1, and more particularly in making and entering each and every part thereof which relates to or affects, directly or indirectly, the lands owned by defendants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees as aforesaid, said lands being in said judgment referred to as Tract No. 7.

53 2. The Court erred in making and entering on November 30, 1943, the judgment and order overruling and denying the Amended Motion to Vacate Judgment and to Dismiss of defendants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees as aforesaid and in failing and refusing to grant and sustain said motion.

Dated December 24th, 1934.

Daniel K. Catlin,
Frederick Pitzman,
Lewis M. Rumsey, Jr.,
As Trustees under deed dated February 1, 1921, and recorded in the Public Records of Madison County, Illinois, in Book 471, at Page 621, commonly known as the Cool Land Syndicate,

By R. H. McRoberts,
R. H. McRoberts,
1630 Boatmen's Bank Building,
St. Louis, Missouri,

By Geo. D. Burroughs,
Geo. D. Burroughs,
Bank of Edwardsville Building,
Edwardsville, Illinois,
Their Attorneys.

Byran, Williams, Cave & McPheeters,
Byran, Williams, Cave & McPheeters,
1630 Boatmen's Bank Building,
St. Louis, Missouri.
Warnock, Williamson & Burroughs,
Warnock, Williamson & Burroughs,
Bank of Edwardsville Building,
Edwardsville, Illinois.

Certificate of Service.

I hereby certify that I have this day served the foregoing Statement of Points on Appeal upon the United States of America, petitioner, by mailing a copy thereof, properly addressed, to Howard L. Doyle, United States Attorney, Federal Building, Springfield, Illinois, and to G. R. Schwarz, Special Attorney, Department of Justice, Jerseyville, Illinois.

Dated at Edwardsville, Illinois, this 24th day of December, 1943.

Geo. D. Burroughs,
Attorney for Defendants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees.

Indorsed, Filed Dec. 27, 1943, G. W. Schwaner, Clerk.

54 And afterwards, to wit: on the 27th day of December, A. D. 1943, there was filed in the office of the clerk of said court, a certain Designation of Portions of the Record and Proceedings to be Included in the Record on Appeal, which said Designation was and is in the words and figures, following, to wit:

55 IN THE DISTRICT COURT OF THE UNITED STATES.

* * (Caption—228) * *

DESIGNATION OF PORTIONS OF THE RECORD AND PROCEEDINGS TO BE INCLUDED IN THE RECORD ON APPEAL.

To the Clerk of said Court:

You are hereby requested, pursuant to Rule 75(a) of the Rules of Civil Procedure for the District Courts of the United States, to include in the record on appeal the following portions of the record and proceedings:

1. Petition for Condemnation filed herein on March 31, 1942.

2. Declaration of Taking No. 1 filed herein on November 12, 1942.

3. Judgment on Declaration of Taking made and entered herein on November 12, 1942.

4. Order of pubilcation made and entered herein on August 2, 1943.

5. Order made and entered herein on September 17, 1943, granting motion of defendants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees, for twenty days additional time in which to plead.

6. Motion to Vacate Judgment and to Dismiss filed herein by defendants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees, on October 7th, 1943, as amended by interlineation on November 17, 1943.

56 7. Order made and entered herein on November 17, 1943, granting petitioner leave to amend petition.

8. Amendment to Petition for Condemnation filed herein on November 17, 1943, together with copy of letter of Secretary of War dated March 26, 1942, filed with said amendment.

9. Order made and entered herein on November 17, 1943, granting defendants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees, etc., time within which to plead to Amended petition for Condemnation.

10. Amended Motion to Vacate Judgment and to Dismiss filed herein on November 22, 1943.

11. Order made and entered herein on November 30, 1943, denying Amended Motion to Vacate Judgment and to Dismiss.
12. Notice of Appeal filed herein on December 9, 1943.
13. This Designation.
14. Statement of Points on Appeal filed simultaneously herewith.

Dated December 24th, 1943.

Daniel K. Catlin,
Frederick Pitzman,
Lewis M. Rumsey, Jr.,
As Trustees under deed dated February 1, 1921, and recorded in the Public Records of Madison County, Illinois, in Book 471, at Page 621, commonly known as the Cool Land Syndicate,

By R. H. McRoberts,
R. H. McRoberts,
1630 Boatmen's Bank Building,
St. Louis, Missouri,

By Geo. D. Burroughs,
Geo. D. Burroughs,
Bank of Edwardsville Building,
Edwardsville, Illinois,
Their Attorneys.

Bryan, Williams, Cave & McPheeters,
Bryan, Williams, Cave & McPheeters,
1630 Boatmen's Bank Building,
St. Louis, Missouri.

Warnock, Williamson & Burroughs,
Warnock, Williamson & Burroughs,
Bank of Edwardsville Building,
Edwardsville, Illinois.

57 Certificate of Service.

I hereby certify that I have this day served the foregoing Designation of Portions of the Record and Proceedings to be included in the Record on Appeal upon the United States of America, petitioner, by mailing a copy thereof, properly addressed, to Howard L. Doyle, United States Attorney, Federal Building, Springfield, Illinois,

and to G. R. Schwarz, Special Attorney, Department of Justice, Jerseyville, Illinois.

Dated at Edwardsville, Illinois, this 24th day of December, 1943.

Geo. D. Burroughs,
Attorney for Defendants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees.

Indorsed, Filed Dec. 27, 1943, G. W. Schwaner, Clerk.

58 United States of America,
Southern District of Illinois,
Southern Division. } ss.

I, G. W. Schwaner, Clerk of the United States District Court in and for the Southern District of Illinois, do hereby certify that the annexed and foregoing is a complete transcript of the proceedings had of record and on file in the case of the United States *vs.* 1,113 Acres of Land, more or less, situate in Madison County, Illinois, and Commonwealth Steel Company, a corporation, *et al.*, Civil Action No. 228, made in accordance with the Designation of Portions of the Record and Proceedings to be Included in the Record on Appeal, as fully as the same appears from the originals thereof now remaining among the records of the said County in my office.

In Testimony Whereof, I have hereunto subscribed my name and affixed the seal of the aforesaid Court at Springfield this 12th day of January, A. D. 1944.

G. W. Schwaner,
(Seal) *Clerk.*

[fol. 44] At a regular term of the United States Circuit of Appeals for the Seventh Circuit, held in the City of Chicago, and begun on the twenty-eighth day of September, in the year of our Lord one thousand nine hundred and forty-three, and of our Independence, the one hundred and sixty-eighth.

8500

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

DANIEL K. CATLIN, FREDERICK PITZMAN and LEWIS M. RUMSEY, JR., as Trustees under Deed Dated February 1, 1921, etc., Defendants-Appellants

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division

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And, to-wit: On the fifteenth day of January, 1944, the above entitled appeal was docketed in this Court and the transcript was filed herein.

And afterwards, to-wit: On the eighteenth day of January, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellants, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Cause No. 8500

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

DANIEL K. CATLIN, et al., etc., Defendants-Appellants

The Clerk will enter our appearance as counsel for Defendants-Appellants.

(Signed) R. H. McRoberts, 1630 Boatmen's Bank Bldg., St. Louis, Mo.; (Signed) Geo. D. Burroughs, Bank of Edwardsville Bldg., Edwardsville, Illinois.

U. S. C. C. A.-7. Filed Jan. 18, 1944. Kenneth J. Carrick, Clerk.

[fol. 45] And afterwards, to-wit: On the twenty-ninth day of January, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee, which said appearance is in the words and figures following to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Cause No. 8500

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

DANIEL K. CATLIN, et al., etc., Defendants-Appellants

The Clerk will enter our appearance as counsel for Plaintiff-Appellee.

(Signed) Howard L. Doyle, United States Attorney, Springfield, Ill.; (Signed) Marks Alexander, Asst. United States Attorney, Springfield, Ill.; (Signed) George R. Schwartz, Special Attorney, Dept. of Justice, Jerseyville, Ill.

U. S. C. C. A.-7. Filed Jan. 29, 1944. Kenneth J. Carrick, Clerk.

And afterwards, to-wit: On the twentieth day of March, 1944, there was filed in the office of the Clerk of this Court, an appearance of counsel for appellee, which said appearance is in the words and figures following, to-wit:

UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Cause No. 8500

THE UNITED STATES OF AMERICA

vs.

KANIEL K. CATLIN, et al,, etc.

The Clerk will enter our appearance as counsel for Appellee.

(Signed) Norman M. Littell, Assistant Attorney General; (Signed) Vernon L. Wilkinson, Attorney, Dept. of Justice, Washington, D. C.

U. S. C. C. A.-7. Filed Mar. 20, 1944. Kenneth J. Carrick, Clerk.

[fol. 46] And afterwards, to-wit: On the fourteenth day of April, 1944, the following further proceedings were had and entered of record, to-wit:

Friday, April 14, 1944.

Court met pursuant to adjournment.

Before Hon. J. Earl Major, Circuit Judge; Hon. Otto Kerner, Circuit Judge; Hon. Sherman Minton, Circuit Judge

8500

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

DANIEL K. CATLIN, FREDERICK PITZMAN and LEWIS M. RUMSEY, JR., as Trustees under Deed Dates February 1, 1921, etc.

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division

Now this day come the parties by their counsel, and this cause comes on to be heard on the transcript of the record and the briefs of counsel, and an oral argument by Mr. R. H. McRoberts, counsel for appellants, and by Mr. Vernon L. Wilkinson, counsel for appellee, and the Court takes this matter under advisement.

And afterwards, to-wit: On the second day of June, 1944, there was filed in the office of the Clerk of this Court, the Opinion of the Court, which said opinion is in the words and figures following, to-wit:

[fol. 47] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT, OCTOBER TERM, 1943, APRIL SESSION, 1944

No. 8500

THE UNITED STATES OF AMERICA, *Plaintiff-Appellee*,

vs.

DANIEL K. CATLIN, FREDERICK PITZMAN and LEWIS M. RUMSEY, JR., as Trustees under Deed Dated February 1, 1921, etc., *Defendants-Appellants*

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division

June 2, 1944

Before Major, Kerner and Minton, Circuit Judges

MAJOR, *Circuit Judge*. This is a condemnation proceeding instituted by the government March 31, 1942. The petition was filed under the Act of August 18, 1890, as amended, 50 U. S. C. A. § 171, and the Appropriations Act of December 17, 1941, 55 Stat. 810. It was alleged that the land to be condemned was "needed for the site, location, construction and prosecution of works for fortifications," and that the necessary funds had been appropriated. At the government's request, an order of immediate possession was entered on the day of the filing of the petition, and thereafter the War Department took such possession and commenced the construction of an Army Engineer Depot.

[fol. 48] On November 12, 1942, a Declaration of Taking was filed, pursuant to the Declaration of Taking Act of February 26, 1931, 40 U. S. C. A. § 258(a), in which appellants were named as the purported owners. The court on the same date entered a judgment or order decreeing that title to the lands described in such Declaration had vested in the United States upon the filing of such Declaration, and that "the right to just compensation for the same is now vested in persons entitled thereto." On November 30, 1943, the District Court denied appellants' motion to vacate the judgment entered November 12, 1942 on the Declaration of Taking, and to dismiss the petition in con-

demnation on the ground that the requisite jurisdictional facts and statutory authority had not been sufficiently alleged.

This appeal is from the judgment on the Declaration of Taking and from the order of November 30, 1943 denying appellants' motion to vacate such judgment and to dismiss the condemnation petition.

Two issues are presented for decision, which, stated in the order of their importance, are:

(1) Whether this court has jurisdiction of the appeal. This depends upon whether the judgment appealed from is final within the meaning of § 128 of the Judicial Code as amended, 28 U. S. C. A. § 225(a).

(2) Whether the condemnation proceeding was authorized by the statutory provision upon which it was predicated. If the first issue is determined adversely to appellants, it will be unnecessary to consider the second issue.

Under a long line of authorities, it has been held that a condemnation proceeding is not reviewable "until after final judgment, disposing of the whole case, and adjudicating all the rights, whether of title or damages, involved in the litigation. The case is not to be sent up in fragments • • • ." *Luxton* v. *North River Bridge Co.*, 147 U. S. 337, 341; *Southern Ry. Co.* v. *Postal Telegraph Co.*, 179 U. S. 641, 643; *Grays Harbor Co.* v. *Coats-Fordney Co.*, 243 U. S. 251, 256 (and many other cases which could be cited). On the authority of these cases, we think there is no question but that the part of the judgment appealed from which denied appellants' motion attacking the sufficiency of the complaint was not final and, therefore, not [fol. 49] subject to review. In fact, this court so held in *Dieckmann* v. *United States*, 88 F. 2d 902. It has recently been held that the denial of a challenge to the validity of an indictment lacks finality so as to give an appellate court jurisdiction to review. *Roche* v. *Evaporated Milk Assn.*, 319 U. S. 21, 30. By the same token, the court's denial of appellants' challenge to the sufficiency of the complaint is not reviewable.

It is contended, however, that the judgment on the Declaration of Taking which vested title in the government is final, and that such judgment is an exception to the gen-

eral rule as to finality in a condemnation proceeding. A number of courts have considered this question and appear to be in rather hopeless conflict. Appellants rely upon the decisions of three circuits as sustaining their position. *City of Oakland* v. *United States*, 124 F. 2d 959; *United States* v. *243.22 Acres of Land*, 129 F. 2d 678; and *Puerto Rico Ry. Light and Power Co.* v. *United States*, 131 F. 2d 491. The Oakland case carries little, if any, weight on the jurisdictional question, which it neither discusses nor decides. The 243.22 Acres of Land case in a measure sustains appellants' contention, although the judgment there appealed from was a "judgment of condemnation" and the court expressly pointed out (footnote page 683) that it made no decision as to whether a judgment based upon a Declaration of Taking as appealable. The Puerto Rico case squarely holds that a judgment on the Declaration of Taking is final and appealable.

Two courts have directly held to the contrary. *Turnbull* v. *United States*, 139 F. 2d 126, and *Dade County* v. *United States*, decided by the Fifth Circuit April 22, 194, —— F. 2d ——. It is doubtful if a review of these conflicting decisions would be of material assistance, and we shall not attempt to do so. It is sufficient to observe that the weight of the authority found in such decisions is almost equally divided and, under such circumstances, we feel perfectly free to reach an independent conclusion.

A study of the Declaration of Taking Act makes it plain, so we think, that any judgment rendered upon such taking is not final but merely interlocutory and not appealable, the same as any other interlocutory order. § 258(a) and related §§ 258(b), 258(c), 258(d) and 258(e), all enacted on the same date, have to do with procedure in condemnation pro-
[fol. 50] ceedings and all contain in their respective titles, "in advance of final judgment." § 258(a), which authorizes the filing of a Declaration of Taking, provides:

> "Upon the filing of such declaration of taking and of the deposit in the court * * * title to said lands * * * shall vest in the United States of America."

Further, it provides:

> "The right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein."

It provides for interest on such judgment on the "amount finally awarded as the value of the property as of the date of taking." It further provides that no interest shall be allowed on the portion of the compensation finally awarded as was paid into court at the time of the filing of the declaration of taking. Further, if the compensation finally awarded exceeds the amount deposited in court, judgment is to be entered against the United States for such excess, and if the amount finally awarded is less than that deposited, judgment shall be in favor of the United States for the difference. (Cf. *United States* v. *Miller*, 317 U. S. 369.)

It will thus be noted that the judgment referred to both in the title and in the Act is that which finally determines the "just compensation" to be awarded. Furthermore, the Act makes no requirement that a judgment or order be entered. The purpose of the Act is accomplished "upon the filing of said Declaration of Taking and of the deposit in the court." The entry of a judgment, therefore, is immaterial and renders no aid to the vesting of title in the government. This court so held in *United States* v. *Sunset Cemetery Co.*, 132 F. 2d 163, 164. As was said in the Dade County case, *supra:*

> "It does not matter whether the court makes any order about it or not. The Act proceeds to say: 'and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein'. That is the real and substantial function of the court. That judgment is the essential and final one. What precedes is interlocutory."

This view is consistent with and, we think, finds sup- [fol. 51] port in *United States* v. *Miller*, *supra*, wherein the court said (page 381):

> "When the declaration is filed the amount of estimated compensation is to be deposited with the court, to be paid as the court may order 'for or on account' of the just compensation to be awarded the owners. Thus the acquisition by the Government of title and immediate right to possession, and the deposit of the estimated compensation, occur as steps in the main proceeding."

As the Court on the following page stated: "The situation is like that in which litigants deposit money as security or to await the outcome of litigation."

An understanding of the purpose of the Act refutes the contention that a judgment entered upon a Declaration of Taking is final. Such purpose was stated in the Miller case, *supra* (page 381):

> "The purpose of the statute is two-fold. First, to give the Government immediate possession of the property and to relieve it of the burden of interest accruing on the sum deposited from the date of taking to the date of judgment in the eminent domain proceeding. Secondly, to give the former owner, if his title is clear, immediate cash compensation to the extent of the Government's estimate of the value of the property."

Premised upon the purpose thus stated, it appears that the Act was not designed to alter the rights of the parties. Nothing is added to or taken from either the right of the government to condemn or the constitutional right of the condemnee to be awarded "just compensation." It merely provides a procedure which protects the rights of the respective parties and expedites the method of their realization.

The government is not required to file a Declaration of Taking. Such procedure is optional. If it elects, however, to do so, it is required to estimate the value of the property taken and make such sum available as compensation to the land-owner. Such action is merely tentative, and, as already pointed out, the amount awarded may be increased or decreased by final judgment. The procedure thus employed is purely incidental to the main suit.

[fol. 52] Furthermore, we are doubtful if the procurement of title by the government under a Declaration of Taking is open to attack. It would seem that the validity of the government's action in taking is dependent solely upon its authority to condemn. If it has the authority to condemn, there follows under the Act the absolute right to take. If there is a lack of authority to condemn, there is also a lack of authority to take. In other words, the authority to condemn and the right to take must stand or fall together. We need not go this far, however, in deciding the question before us. It is sufficient, and we decide nothing more, that

a judgment rendered upon a Declaration of Taking is interlocutory and not subject to review. The appeal is

Dismissed.

A true Copy:

Teste:

—— ——, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit.

[fol. 53] Endorsed: Filed June 2, 1944, Kenneth J. Carrick, Clerk.

And on the same day, to-wit: On the second day of June, 1944, the following further proceedings were had and entered of record, to-wit:

Friday, June 2, 1944

Court met pursuant to adjournment.

No. 8500

Before Hon. J. Earl Major, Circuit Judge; Hon. Otto Kerner, Circuit Judge; Hon. Sherman Minton, Circuit Judge.

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

DANIEL K. CATLIN, FREDERICK PITZMAN, and LEWIS M. RUMSEY, JR., as Trustees under Deed Dates February 1, 1921, etc., Defendants-Appellants.

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Southern District of Illinois, Southern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this Court that this appeal be, and the same is hereby, dismissed.

And afterwards, to-wit: On the twenty-third day of June, 1944, the Mandate of this Court issued to the District Court of the United States for the Southern District of Illinois, Southern Division.

And afterwards, to-wit: On the third day of July, 1944, there was filed in the office of the Clerk of this Court, a Motion for Stay of Execution and Enforcement and Affidavit in Support thereof, which said motion and affidavit are in the words and figures following, to-wit:

[fol. 54] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 8500

UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

DANIEL K. CATLIN, FREDERICK PITZMAN and LEWIS M. RUMSEY, JR., as Trustees under Deed dated February 1, 1921, etc., Defendants-Appellants

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division

MOTION FOR STAY OF EXECUTION AND ENFORCEMENT

Come now Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees under deed dated February 1, 1921, and recorded in the public records of Madison County, Illinois, in Book 471, at Page 621, Appellants in the above entitled cause, and respectfully show to this Honorable Court that they intend to and will file in the Supreme Court of the United States a petition for a writ of certiorari to review the opinion and decision rendered by this Court in the above entitled cause on June 2, 1944, dismissing their appeal in the above entitled cause.

And said Appellants further show to this Honorable Court that its mandate has heretofore on, to-wit, June 23, 1944, been issued and forwarded to the Clerk of the District Court of the United States for the Southern District of Illinois at Springfield.

Wherefore, the premises considered, the said Appellants pray that this Court may stay the execution and enforcement of said opinion and decision for a reasonable time, not less than (30) days, within which to allow the said Appellants to file in the Supreme Court of the United States such [fol. 55] petition for a writ of certiorari, and also that the

mandate heretofore issued to the said District Court may be recalled.

R. H. McRoberts, Attorney, 1630 Boatmen's Bank Building, St. Louis, Missouri. Bryan, Cave, McPheeters & McRoberts, 1630 Boatmen's Bank Building, St. Louis, Missouri. Warnock, Williamson & Burroughs, Bank of Edwardsville Building, Edwardsville, Illinois, of Counsel.

R. H. McRoberts, one of the attorneys for Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees under Deed dated February 1, 1921, etc., Appellants in the above entitled cause, hereby certifies that he has been directed by his said clients to take all necessary steps to obtain a review by the Supreme Court of the United States of the opinion and decision rendered by this Honorable Court in the above cause on June 2, 1944; that pursuant thereto he will file in the Supreme Court of the United States a petition for a writ of certiorari to review the said opinion and decision of this Honorable Court; that said proceedings are and will be taken in good faith in the honest belief that the aforesaid opinion and decision of this Court is erroneous, and because the Appellants are aggrieved by the said opinion and decision; and that the aforesaid application to this Court for stay of execution and enforcement and to recall its mandate is not filed, and the petition for a writ of certiorari which will be filed in the Supreme Court of the United States will not be filed, for purposes of delay.

R. H. McRoberts, Attorney for Appellants Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees under Deed dated February 1, 1921, etc.

[fol. 56] And afterwards, to-wit: On the twelfth day of July, 1944, the following further proceedings were had and entered of record, to-wit:

Wednesday, July 12, 1944.

Court met pursuant to adjournment.

Before Hon. Otto Kerner, Circuit Judge.

8500

UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

DANIEL K. CATLIN, FREDERICK PITZMAN, and LEWIS M. RUMSEY, JR., as Trustees under Deed Dates February 21, 1921, etc., Defendants-Appellants.

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division.

Motion of counsel for appellants, it is ordered that the mandate of this Court heretofore issued herein be recalled, and that the reissuance of said mandate be and it is hereby, stayed pursuant to Rule 25 of the rules of this Court.

And afterwards, to-wit: On the tenth day of August, 1944, there was filed in the office of the Clerk of this Court, a Motion for Further Stay of Execution and Enforcement, which said Motion and Affidavit in support thereof is in the words and figures following, to-wit:

[fol. 57] IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 8500

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

DANIEL K. CATLIN, FREDERICK PITZMAN, and LEWIS M. RUMSEY, JR., as Trustees under Deed Dated February 1, 1921, etc., Defendant-Appellants.

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division.

MOTION FOR FURTHER STAY OF EXECUTION AND ENFORCEMENT

Come now Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees under deed dated February 1, 1921, and recorded in the public records of Madison County, Illinois, in Book 471, at Page 621, Appellants in the above entitled cause, and respectfully show to this Honorable Court that they intend to and will file in the Supreme Court of the United States a petition for a writ of certiorari to review the opinion and decision rendered by this Court in the above entitled cause on June 2, 1944, dismissing their appeal in the above entitled cause.

Said Appellants further show to the Honorable Court that its mandate was heretofore on, to-wit, June 23, 1944, issued and forwarded to the Clerk of the District Court of the United States for the Southern District of Illinois at Springfield and that this Honorable Court did heretofore on, to-wit, July 12, 1944, duly enter an order recalling said mandate and staying the same pursuant to Rule 25 of this Honorable Court.

Said Appellants further show to this Honorable Court that under said Rule 25 the stay of said mandate granted [fol. 58] by this Honorable Court on said July 12, 1944, shall not exceed 30 days unless extended by order of this Honorable Court; that said Appellants need time beyond August 11, 1944 (the 30th day after said July 12, 1944) to enable them properly to prepare, for filing in the Supreme Court of the United States, a petition for a writ of certiorari to review the aforesaid opinion and decision.

Wherefore, the premises considered, the said Appellants pray that this Court may further stay the execution and enforcement of said opinion and decision pending application by the Appellants to the Supreme Court of the United States for a writ of certiorari, provided said application is made on or before September 2, 1944.

R. H. McRoberts, Attorney, 1630 Boatmen's Bank Building, St. Louis, Missouri. Bryan, Cave, McPheeters & McRoberts, 1630 Boatmen's Bank Building, St. Louis, Missouri; Warnock, Williamson & Burroughs, Bank of Edwardsville Building, Edwardsville, Illinois. Of Counsel.

R. H. McRoberts, one of the attorneys for Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees under Deed dated February 1, 1921, etc., Appellants in

the above entitled cause, hereby certifies that he has been directed by his said clients to take all necessary steps to obtain a review by the Supreme Court of the United States of the opinion and decision rendered by this Honorable Court in the above cause on June 2, 1944; that pursuant thereto he will file in the Supreme Court of the United States a petition for a writ of certiorari to review the said [fol. 59] opinion and decision of this Honorable Court; that said proceedings are and will be taken in good faith in the honest belief that the aforesaid opinion and decision of this Court is erroneous, and because the Appellants are aggrieved by the said opinion and decision; and that the aforesaid application to this Court for further stay of execution and enforcement is not filed, and the petition for a writ of certiorari which will be filed in the Supreme Court of the United States will not be filed, for purposes of delay.

R. H. McRoberts, Attorney for Appellants, Daniel K. Catlin, Frederick Pitzman and Lewis M. Rumsey, Jr., as Trustees under Deed dated February 1, 1921, etc.

[fol. 60] And on the same day, to-wit: On the tenth day of August, 1944, the following further proceedings were had and entered of record, to-wit:

Thursday, August 10, 1944.

Court met pursuant to adjournment.

Before Hon. J. Earl Major, Circuit Judge.

No. 8500

THE UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

DANIEL K. CATLIN, FREDERICK PITZMAN and LEWIS M. RUMSEY, JR., Trustees under Deed Dated February 1, 1921, etc., Defendants-Appellants.

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division.

On motion of counsel for appellants, it is ordered that the issuance of the mandate herein be further stayed to September 2, 1944.

And afterwards, to-wit: On the sixteenth day of August, 1944, there was filed in the office of the Clerk of this Court, a Praecipe for Record, which said praecipe is in the words and figures following, to-wit:

[fol. 61] [Stamp:] U. S. C. C. A.—7 Filed Aug. 16, 1944. Kenneth J. Carrick, Clerk.

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 8500

UNITED STATES OF AMERICA, Plaintiff-Appellee,

vs.

DANIEL K. CATLIN, FREDERICK PITZMAN and LEWIS M. RUMSEY, JR., Trustees under Deed Dated February 1, 1921, etc., Defendants-Appellants.

Appeal from the District Court of the United States for the Southern District of Illinois, Southern Division.

Praecipe for Record

To Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit:

Please prepare certified transcript of the record in the above entitled cause for filing in the United States Supreme Court, pursuant to Supreme Court Rule 38, including

1. Printed Transcript of Record.

2. Entire proceedings in the United States Circuit Court of Appeals for the Seventh Circuit, including, but without limitation—

(a) Filing and Docketing of Transcript of Record on Appeal.

(b) Argument and Submission on April 14, 1944.

(c) Opinion and Decision dated June 2, 1944.

(d) Mandate and Order Issuing same.

(e) Motion for Stay of Execution and Enforcement and for Recall of Mandate.

(f) Order recalling mandate and staying same.

(g) Motion for Further Stay of Execution and Enforcement.

(h) Order Staying Mandate until September 2, 1944.

R. H. McRoberts, 1630 Boatmen's Bank Building, St. Louis, Missouri, Attorney for Appellants. [fol. 62] Bryan, Cave, McPheeters & McRoberts, 1630 Boatmen's Bank Building, St. Louis, Missouri. Warnock, Williamson & Burroughs, Bank of Edwardsville Building, Edwardsville, Illinois, of Counsel.

[fol. 63] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

I, Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing typewritten pages contain a true copy of proceedings had and papers filed as called for by the designation for record with the exception of item (d), these entries not appearing on the records of this Court, filed on the sixteenth day of August, 1944, in:

Cause No. 8500

THE UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

vs.

DANIEL K. CATLIN, FREDERICK PITZMAN and LEWIS M. RUMSEY, JR., as Trustees under Deed Dated February 1, 1921, etc., Defendants-Appellants,

as the same remains upon the files and records of the United States Circuit Court of Appeals for the Seventh Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States Circuit Court of Appeals for the Seventh Circuit, at the City of Chicago, this seventeenth day of August A. D. 1944.

Kenneth J. Carrick, Clerk of the United States Circuit Court of Appeals for the Seventh Circuit. (Seal.).

[fol. 64] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 23, 1944

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(5647)